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Vermont Special Education: State-Imposed Rules

Purpose

This document describes State of Vermont Special Education Rules that are not required by IDEA or federal regulations.

Background

As part of its annual IDEA Part B application for 611 and 619 funds, the Vermont Agency of Education must identify and report to the Office of Special Education Programs (OSEP) any State of Vermont imposed special education rules that are not required by IDEA or Federal regulations, and identify these rules to its local education agencies, in writing. The following language describing this requirement comes from Section 608(a) of the IDEA, and requires each State that receives funds under this title to:

- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
- (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

States must attach to this application a list identifying any rule, regulation, or policy that is State imposed (not required by IDEA or Federal regulations). If there are no such State-imposed rules, regulations, or policies, please so indicate. In addition, the State is required to inform local education agencies in writing of such State-imposed rules, regulation or policy. (20 U.S.C. 1407(a); 34 CFR § 300.199).

Vermont Rules Not Present in IDEA or Federal Regulation

The rules listed below reflect State of Vermont requirements not present in the IDEA or federal regulation.

2360.2.2 FAPE for students who have graduated

A student who has not yet graduated and whose entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a), may be allowed to complete the remaining academic year with IEP team approval and approval from the Agency of Education.

2360.2.3 FAPE for students who have dropped out of school

If a student drops out of school, that student may return at any time and request to be provided with a FAPE until the student graduates with a high school diploma or the student's entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2.



2360.2.12 Special Education Services

(1) Special education services include, as appropriate: (5) Co-teaching services is the delivery of special education services in the general education classroom provided jointly by the general education classroom teacher and a special education teacher. (i) By selecting the co-teaching services model, the IEP team has determined that there is no compelling reason why the child's instruction cannot be provided jointly in the general education classroom. The general education classroom teacher shall be an active participant in IEP meetings. (ii) The general education and special education teachers will review and document each child's progress towards course objectives and IEP goals. (iii) Should a progress review at any grading period indicate that a child is in danger of failing a course or is not making satisfactory progress towards IEP goals, the IEP team shall meet immediately to: (A) Determine continued co-teaching services or change of placement, and (B) Revise the IEP as appropriate. (iv) In order to offer co-teaching services, the LEA must complete a plan for implementation which includes continuous professional development and submit the plan to the Vermont Agency of Education for approval.

2360.2.13 Personnel Qualifications

(c) Policy: In implementing this section, the Vermont Agency of Education has a policy that includes a requirement that responsible LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

2361.2 Essential Early Education (EEE) Eligibility of Children Age Three Years Up To the Sixth Birthday

(d) For the purposes of this section, "developmental delay" is determined through a comprehensive evaluation as measured by at least two appropriate assessment measures, one of which must be a standardized diagnostic instrument. Other measures may include, but are not limited to, observation of a child's function across daily routines and settings, interview with teachers, family, and/or caregivers, review of ongoing assessment, and, if warranted, a functional behavior assessment. To meet developmental delay criteria a child must demonstrate at least one of the following:

- (1) A 40% delay in one or more developmental domains; or
- (2) A 25% delay in two or more developmental domains; or
- (3) A 2.0 standard deviation at, or below the mean (2nd percentile) in one or more developmental domains; or
- (4) A 1.5 standard deviation at, or below the mean (7th percentile) in two or more developmental domains.

(e) Developmental Domains are defined as:

- (1) Speech and language development including receptive and/or expressive communication, articulation, fluency, and/or voice;
- (2) Adaptive development (self-help skills);
- (3) Social or emotional development;
- (4) Physical development including gross or fine motor skills; or
- (5) Cognitive skills such as perception, memory, processing, and reasoning.

- (f) The administration of any assessments shall be in compliance with the evaluation requirements set forth in Rule 2362.2.1.
- (g) The percentage delay in a child's performance on a norm referenced assessment may be measured by dividing the child's age equivalent score in months by the child's actual age in months, and then multiplying the quotient by 100. The result is then subtracted from 100 to determine the child's percentage of delay.
- (h) If the EPT has determined the child eligible to receive special education and related services an IEP shall be written within 30 days of the eligibility determination

2361.4 Transition for Children Moving into Kindergarten

- (a) In order to ensure a smooth transition to kindergarten, the IEP team shall:
 - (1) Meet three to six months prior to the child's entrance into kindergarten to ensure that the child's IEP is ready to be implemented at the beginning of the school year.

2362 Eligibility for Children Ages Six Years through Twenty-One (34 CFR §300.306)

(d) Adverse Effect.

(1) In this section, "adverse effect" and to "adversely affect" are used interchangeably and mean to have a negative impact on the basic skills areas. This impact does not need to be substantial, significant, or marked. It is more than a minor or transient hindrance, evidenced by findings and observations based on data sources and objective assessments with replicable results. An adverse effect on educational performance does not include a developmentally appropriate characteristic of age/grade peers in the general population.

(2) The EPT must identify areas of adverse effect due to disability in the basic skills areas using a range of diagnostic and performance data appropriate to the student where the disability category requires a finding of adverse effect. The EPT and IEP team will consider academic and nonacademic aspects of the child's functioning.

(3) The documentation of adverse effect on educational performance must also substantiate that the educational deficiencies persist or will persist over time in spite of specific alternative strategies that are provided within the general education setting. The EPT should document evidence that scientific, research-based interventions have been implemented with fidelity. The EPT will consider these efforts and their impact when determining adverse educational performance. Vermont State Board of Education Rules Series 2360 – Special Education Revised 2022 Page 75 of 169

(e) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, fluency including oral reading skills, vocabulary development, reading comprehension strategies), or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.

(f) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:

- (1) Consider the interventions, services, and accommodations the student may need, and

(2) Determine and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.

(g) Basic skill areas—

(1) Unless otherwise specified in the disability category in these rules, basic skill areas are:

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skills;
- (v) Reading comprehension;
- (vi) Mathematics calculation;
- (vii) Mathematics reasoning;
- (viii) Motor skills; and
- (ix) Functional skills.

(2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

(3) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(4) "Functional skills" means the acquisition of essential and critical skills needed for a child with disabilities to learn specific daily living, personal, social, and employment skills or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for post-secondary and other life-long opportunities Adverse Effect.

2362.1 Categories of Disability

(a) Autism Spectrum Disorder

(4) The EPT shall obtain an opinion of a licensed psychologist and/or medical physician who have training and experience in understanding autism spectrum disorders and other developmental disorders as to the existence of an autism spectrum disorder and its effect on the student's ability to function and whether there is an adverse effect on the child's educational performance.

(c) Emotional disturbance

(3) The EPT shall obtain an opinion of a licensed psychologist or psychiatrist as to the existence of an emotional disturbance and its effect on the student's ability to function, based on the above criteria.

(4) Upon determination of the existence of an emotional disturbance disability, the parent shall be informed of the availability of interagency coordination of services, as defined by 33 V.S.A. §4301 et seq. (e) Intellectual disability means a delay in learning of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations

from the mean of a test of intellectual ability, existing concurrently with deficits in adaptive behavior.

(h) Other health impairment

(2) In order to determine the existence of an other health impairment and its effect on the student's ability to function, the EPT shall obtain an opinion from a person:

- (i) Whose professional licensure authorizes him or her to offer an opinion on the existence of the specific condition suspected to be another health impairment and its effect on the student's ability to function, and
- (ii) Who has specific training and experience in diagnosing and recommending treatment for the specific condition suspected.

(j) Speech or language impairment: The EPT shall obtain an opinion from a licensed speech language pathologist as to the existence of a speech or language impairment and its effect on the student's ability to function. The determination of a speech or language impairment shall be based on the following criteria:

(1) Listening comprehension. A significant deficit in listening comprehension exists when a student demonstrates at least 2.0 standard deviations below the test mean on at least one composite score and other measures of auditory processing or comprehension of connected speech. Auditory processing or comprehension include:

- (i) phonology,
- (ii) morphology,
- (iii) syntax,
- (iv) semantics, or
- (v) pragmatics.

(2) Oral Expression. For purposes of determination of a speech and language impairment, a significant deficit in oral expression exists when a child demonstrates one or more of the following conditions:

(i) Voice. A significant deficit in voice exists when both of the following are present:

- (A) Documentation by an otolaryngologist that treatment is indicated for a vocal pathology or speech related medical condition, and
- (B) Abnormal vocal characteristics in pitch, quality, nasality, volume or breath support, which persist for at least one month.

(ii) Fluency. A significant deficit in fluency exists when the student exhibits one or more of the following behaviors:

- (A) Part word repetitions or sound prolongations occur on at least 5% of the words spoken in two or more speech samples, or
- (B) Sound or silent prolongations exceed one second in two or more speech samples, or
- (C) Secondary symptoms or signs of tension or struggle during speech which are so severe as to interfere with the flow of communication.

(iii) Articulation. A significant deficit in articulation attributed to an organic or functional disorder exists when a student is unable to articulate two or more of the unrelated

phonemes in connected speech, set forth below, and it is not attributed to dialect or second language difficulties.

- (iv) Oral Discourse. A significant deficit exists when a student demonstrates a deficit of at least 2 standard deviations below the test mean on at least one composite score and other measures of oral discourse. Oral discourse includes:
 - (A) phonology,
 - (B) morphology,
 - (C) syntax,
 - (D) semantics, or
 - (E) pragmatics.

2362.2 Procedures for Evaluation and Determination of Eligibility-Definition and Purpose

An evaluation is a compilation of information that is designed to assist: (1) The Evaluation Planning Team (EPT) in determining eligibility for special education;

- (1) The EPT membership for a student/child suspected of having a specific learning disability shall also include the following people:
 - (ii) The student/child's general education teacher, or
 - (iii) If the student/child does not have a general education teacher, a general education teacher qualified to teach a student/child of his or her age; or
 - (iv) For a student/child of less than school age, an individual qualified to teach a student/child of his or her age; and
 - (v) At least one person qualified to conduct individual diagnostic examinations of students/children, such as a school psychologist, speech and language pathologist, special education teacher, or remedial reading teacher.
- (4) Where the EPT cannot achieve consensus, as a member of the EPT, the LEA representative shall make the final decision.

2362.2.1 Initial Evaluations (34 CFR §300.301)

- (b) Upon receipt of a request for an evaluation, the school district shall, within fifteen calendar days, either:
 - 1. Request parent consent to initiate the evaluation
 - 2. Convene an Evaluation Planning Team (EPT) meeting
 - 3. Provide written reasons for denial of the request
- (c) The initial evaluation shall be completed and the report issued within sixty days from either:
 - 1. The date parental consent has been received by the LEA.
 - 2. The date on the LEA's Notice, which informs parents that it will be reviewing existing data as the sole basis for the initial evaluation.

2363.7 Content of IEP (34 C.F.R. § 300.320)

- (b) Measurable annual goals related to the child's present levels of academic and functional performance which shall:

- (1) Use pertinent data to inform the development of appropriate goals and objectives.
 - (2) Be written as measurable short-term objectives or benchmarks with projected dates for accomplishment, including a description of the evaluation procedures and the specific data that will be used to assess goals progress.
 - (3) Enable the child to be involved in and progress, to the extent appropriate, in the same curriculum as children without disabilities. For preschool children, goals shall include participation in activities appropriate for children without disabilities.
 - (4) Enable the child to meet other educational needs that result from his or her disability.
 - (5) Be accompanied by a method of reporting the child's progress to the parents at least as often as other parents in the school receive progress reports. A progress report shall inform parents of:
 - (i) Their child's progress toward the annual goals; and
 - (ii) The extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.
- (j) Parent Input. The IEP shall contain a section for parents to provide written comments regarding their child's IEP. Following an IEP meeting to write or amend an IEP, the LEA shall send the IEP to the parent together with prior written notice of decision. The parent shall be provided 10 days to complete and return the parent input section of the IEP. The purpose of the parent input section is to facilitate feedback from families to ensure they have an opportunity to express any opinions about the IEP or the IEP process. Upon receipt of the parent input, the LEA may, but is not required to, schedule a meeting to discuss parental concerns.